Abstract Proceedings of the Travancore Legislative Council.

The Council met in the Dewan's room, Public Offices, at 12 noon, on Monday, the 25th June 1917/12th Mithunam 1092.

Present.

DEWAN BAHADUR M. KRISHNAN NAIR ESQ., B. A. & B. L.,
DEWAN.....*Presiding.*

A. J. Vieyra Esq., B A.
V. Subba Aiyar Esq., B. A. & B. L.
N. Subrahmanya Aiyar Esq., M. A.
R. Mahadeva Aiyar Esq., B. A.
Rao Bahadur K. V. Rengaswami Aiyangar Esq., M. A.
N. Raman Pillai Esq., B. A.
John Kuriyan Esq., B. A., B. C. E.
I. C. Chacko Esq., B. A., B. Sc.
J. A. Richardson Esq.
K. Parameswaren Pillai Esq., B. A. & B. L.
T. K. Velu Pillai Esq., B. A. & B. L.
Paul Daniel Esq., M. A. & L. T.
A. Govinda Menon Esq., B. A.
M. Subrahmanya Pillai Esq.

K. Narayanan Pandalay Esq., B. A. & B. L.....*Secretary.*

The Secretary reported that the Hindu Religious Endowments Regulation Amendment Bill, the Weights and Measures Regulation Amendment Bill and the Succession Certificate Regulation Amendment Bill, which were finally passed by the Council on the 26th February 1917, received the assent of His Highness the Maha Raja on the 28th March 1917, and became law as Regulations III, IV and V of 1092, respectively.

THE CRIMINAL LAW AMENDMENT BILL.

Mr. Subba Aiyar, in introducing the Criminal Law Amendment Bill, spoke as follows:—

' Sir.

I beg to introduce a Bill to amend the Penal Code and the Criminal Procedure Code. The amendments to the latter Code are necessitated by the amendments to the former.

2. With the exception of Sections 85 and 195 taken from the New York Code, Section 164 from the German Code and Section 449 from the Baroda Penal Code, the Travancore Penal Code follows closely the British Indian Penal Code. Though, after the passing of Regulation I of 1074, the British Indian Penal Code has undergone several amendments, very few of them have been adopted in the Regulation. It is therefore deemed expedient to bring the Regulation into conformity with the corresponding British Indian Code by adopting the subsequent amendments to the same.

3. Clauses 2 and 3 of the draft Bill relate to the addition of some illustrations to Sections 13 and 14. This is necessary in view of the Village Panchayat Courts Regulation, I of 1090, now in force, and the constitution of Village Panchayat Courts thereunder.

4. Clause 4 relates to the law of conspiracy. Under the British Indian law as it originally stood, conspiracy was not a substantive offence. It was a mode of abetment punishable only if an act or illegal omission takes place in pursuance to it. Later on, an exception was made, *viz.*, that if the conspiracy is to wage war or to attempt to wage war under Section 121 or to commit any other offence under Section 121 A, it was made punishable, even though no act or illegal omission takes place in pursuance to the conspiracy.

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This was adopted in the Travancore Penal Code, in Sections 112 and 113. Act VIII of 1913 extended the law still further. In so doing, it followed the English law with some modifications. Under the English law, a conspiracy to do an illegal act or a legal act by unlawful means is made punishable even though no overt act or illegal omission takes place in furtherance of the conspiracy.

The law has been in existence from about the 14th century in England, and it is therefore a sufficient guarantee that it is not likely to create any undue hardship to the public. The proposed amendment makes an agreement between two or more persons to commit an illegal act, or an act which is not illegal by illegal means, an offence. The word 'illegal' as defined in Section 32 of the Regulation applies to everything which is an offence, or which is prohibited by law, or which furnishes ground for a civil action. Thus then, the agreement may be to commit an offence or to commit something prohibited by law or to commit something which will afford ground for a civil action. In the Bill, conspiracy is divided into two classes, the one to commit an offence and the other to commit an illegal act or to use illegal means not amounting to an offence. In the case of conspiracy to commit offences, no overt act or illegal omission is necessary. Here the English law is followed. In all other cases, an act or illegal omission in pursuance to the conspiracy is made necessary, and thus a departure is made from the English law. Why conspiracy to commit an offence should be made punishable without an act or omission has been forcibly expressed by Sir Reginald Craddock in moving the Bill. He says:—"If a board of conspirators were surprised or over-heard plotting the crime of "murder but they were caught before there was time for any of them to put into exe- "cution any of the steps necessary for the act, however guilty their intentions, however "diabolical and well-conceived their plot, they will have committed no offence under the "law. Not only this; but even if with the clearest evidence of con piracy such as I have "described, the offence is committed by some third person, it would be impossible to bring "the offenders to book unless it was possible to show by evidence the connec- "tion of the man or men who carried out the crime with these conspirators." The question then is whether it is desirable to extend the law to acts which are not offences in themselves. Here again, I cannot better explain it than by quoting Sir Reginald Craddock's words. He says:—"Conspiracies to do illegal acts or legal acts by "illegal means, when neither the object of the conspiracy nor the means to be used con- "stitute an offence, under the English law require no overt act to make the "offence complete. In this Bill, it is provided that an overt act is necessary to "make such conspiracies criminal. In the case of these conspiracies, the wrong to be "inflicted, if committed by a single person, would merely be illegal. As long as it is a "case of a private wrong between two individuals, the party aggrieved can be left to his "civil remedies; but when the wrong is inflicted upon him by a combination of his 'neighbours or his enemies, or by a class of persons acting against a member or members- "of another class, the consequence may become so serious as to require the intervention "of the State with power to punish, not only because such a conspiracy may lead to acts "of lawlessness and conduce to a breach of the peace, but also on account of the great "importance of protecting the individual in the exercise of his private rights as a citizen "The ordinary civil law may suffice to protect him against one opponent, but he may "easily be driven to surrender his lawful rights by a combination of many opponents. "There may be a conspiracy to wrong a man in the exercise of his trade or profession, "a conspiracy to deprive him of his common rights, and a conspiracy on the part of one "sect or class to cause persistent annoyance to another sect or class; these are all instances "of conspiracies which it is desirable to render punishable by law if once they go beyond "the stage of mere agreement. There are many other ingenious devices for coercing and "annoying an unpopular person or a member of another creed, to which the great "diversities of race, class and creed that prevail in India render India peculiarly liable... "... ...The point that I wish to impress upon this Council is that these petty persecution "may possibly lead to petty crime, from petty crime to organized crime, and from "organized crime to a state of terrorism and demoralisation, which is subversive of all "peace and justice and is harmful to all interests, public and private. What this Bill is "intended to do is to confer on the authorities power to check these movements in their "earlier stage of persecution and wrong-doing before their other and more serious con- "sequences shall have time to ensue. My firm contention is that the principle of this "Bill is a right principle, and the powers it confers are urgently necessary in the interests "of peaceful and quiet government."

From the above extract it will be evident that it is in public interests that a conspiracy to inflict a wrong on a person by a combination of persons is proposed to be made punishable. To avoid any misapprehension about the matter, I may state that it is not every wrong to a person by a combination of persons that is proposed to be dealt with

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under the clause. It is only if the wrong is likely to be a source of danger to the public or to the society at large or to the State that the provision will be brought into requisition. The question whether any particular wrong is likely to have the above effect is a question of fact. The Government will be the best judge in the matter. It is therefore proposed to amend the Criminal Procedure Code with a view to make the sanction a pre-requisite for the launching of prosecutions against persons conspiring to do acts which may not be offences in themselves. This I have no doubt will be considered as a sufficient safeguard against vexatious prosecutions under the Section. This form of conspiracy will therefore be of the same category as offences against the State specified in Section 174 of the Criminal Procedure Code.

5. Clause 5 deals with the offence of promoting enmity between classes. Section 153A was added by Act IV of 1898. Section 153A was first moved as an amendment to the British Indian Section 124A. It was however removed by the Select Committee from Chapter VI to Chapter VIII. In presenting the report of the Select Committee, the Honourable Mr. Chalmers observed as follows:—"We have also removed the offence of stirring up class hatred from the sedition clause and have inserted it in the Chapter relating to offences against public tranquillity. This offence no doubt affects the State indirectly. It affects the State through the danger it causes to public tranquillity. It is less akin to treason than a seditious attack upon the Government by law established, and therefore we have provided a much smaller punishment. But in India the offence is a dangerous one. When class or sectarian animosity is directed against any section of Her Majesty's subjects, the members of that section are in peril. Any accidental event may cause an explosion, and it is difficult to foresee the direction which the explosion will take, etc." Section 124A and its amendments have been bodily adopted in the Travancore Code and not Section 153A. I think it ought to be inserted as Section 145A after Section 145.

6. Section 261 of the Regulation penalises the uttering of or dealing in or selling any fictitious Postal or Anchal stamps. Sub-section (4) defines 'Government' as used in the Section and in Sections 252 to 260. But it will be found that in Sections 252 to 260 the expression 'Government' is not used, but the words 'Government of India'. The words 'and also in Sections 252 to 260' have therefore to be deleted.

7. The expression 'Government' in Section 293 means the Travancore Government and the amendment is intended to make the meaning clear.

8. Clause 8 raises the age of consent under Section 375 in the case of husband to 12. On the representation of Mr. K. A. Krishna Aiyangar of Alleppey to raise the age of consent to 14, the Government passed Proceedings, No. J. 1865, dated the 15th February 1916, that the same will be raised to 12 in the case of the husband also. The amendment is intended to give effect to the same.

9. Clause 9 of the draft Bill introduces the corresponding British Indian Sections about currency-notes and bank-notes.

10. Section 508 corresponding to British Section 505 has been since amended by Act IV of 1898. The amendment necessarily follows Section 153A which is to be added as Section 145A. The Section as it stands requires that the person who publishes a report should know that it is false. The amendment makes it penal if he has no reasonable grounds for believing the given statement to be true. Further, the Section makes it penal if the statement, rumour or report be published with intent to cause or which is likely to incite any class or community of persons to commit any offence against any other class or community.

11. Clause 11 relates to the amendment of Chapter XXIV of the Penal Code regarding whipping. Sections 515 to 519 relate to whipping. These provisions follow the Whipping Act of 1864. Corporal punishment was in vogue throughout the whole of India for a long time. In 1834 it was abolished by Lord William Bentinck with the idea of substituting a more effective system of discipline as a deterrent against crimes. Consequently, a committee of prison discipline was appointed who suggested various reforms. Whatever may be the object of those reforms, it is clear that they were not thought enough, and Lord William Bentinck's aim was not achieved as we find that in 1844 a Regulation was passed *re*: introducing whipping in Bengal. This was extended from time to time to other parts of India. This state of things continued until 1861 when the Penal Code was passed. With regard to flogging, the Law Commissioners observed as follows:—"We have not thought it desirable to place flogging in the list of punishments. Being satisfied that the punishment of flogging can be proper only in a few cases and not being satisfied that it is necessary in any, we are unwilling to retrace its steps and to re-establish throughout the British territories a practice which by a policy unquestionably humane

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and by no means proved to have been injudicious has recently been abolished throughout a large part of their territories". When the Penal Code was referred to a Select Committee in 1855, they took a different view and thought that whipping should be included in the list of punishments in the Code. The Government of India thought that it was necessary to take the opinion of Local Governments and the various High Courts on the question of whipping. But the passing of the Penal Code could not be delayed. Consequently, the Penal Code was passed in 1861 with the provisions *re:* whipping omitted. The first Whipping Bill which was passed in Council did not become law on account of its unsatisfactory nature and a second one was passed in 1864. This Act underwent many amendments, the most important amending Act being Act III of 1895. The whipping Act of 1864 as amended by Act III of 1895 was adopted in Travancore as Sections 515 to 519 of the Penal Code. Since then the British Indian Whipping Act and its amendments were repealed and a consolidated Whipping Act was passed by the Government of India as Act No. IV of 1909. This Act introduces important changes by reducing the number of offences for which whipping may be inflicted. Sir Harvey Adamson, in introducing the Bill, said:—"In the progress of public opinion the infliction of whipping "as a judicial punishment comes to be regarded with ever increasing disfavour. The "object of the Bill is to mitigate the severity of the Whipping Act and to bring it into "line with public opinion of the present day". The general principles governing the amended Act are, to use his own words—

(1) that so long as the system of prison administration in India is one of association and not of segregation, it is necessary for the protection of first offenders from contaminating influences to retain whipping as a punishment for theft and kindred offences;

(2) that whipping is an unnecessary punishment for offences that are not of an active or daring character;

(3) that whipping should not be inflicted in cases where it is likely to outrage self-respect;

(4) that whipping is peculiarly suited to brutal, cruel and sordid offences involving personal violence;

(5) that where offences are not of this nature it is unnecessary to add whipping to imprisonment on a second conviction; and

(6) that whipping is a suitable punishment for juvenile offenders when administered with moderation.

Applying these principles, it was thought inexpedient to award whipping in many of the cases mentioned in the Act of 1864, as amended by Act III of 1895. The difference between the old and the new Act may be stated as follows:—

i. There are ten offences mentioned in Section 2 of the Act of 1864 corresponding to Section 515 of the Travancore Penal Code. The present Act has reduced them to five. Clause (3) relating to theft by a clerk or servant, clauses (5) and (6) relating to extortion, and (7) and (8) relating to stolen property, have been omitted.

ii. For Sections 3, 4 and 4A corresponding to Sections 516 and 517 of the Regulation, Section 4 has been substituted. In Section 4—

(a) groups A and B,

(b) assault under Section 354 of group C,

(c) robbery in group D except when hurt is caused in committing it, and

(d) groups E to G

are omitted; and

(e) abetments and attempts of the offence of rape

have been included.

Thus, though there are 18 offences in Section 4, the new Act reduces the same to 4.

The effect of the amendment is to exclude whipping as an additional punishment on second conviction and to limit the offences punishable with whipping in lieu of or in addition to other punishments.

iii. With regard to Section 5 corresponding to Section 518 of the Regulation, in the case of juvenile offenders, offences specified in Chapter VI of the Penal Code and Sections 153A and 505 of the Indian Penal Code have been excluded, and offences under Acts other than the Penal Code which may be notified by the Governor-General-in-Council have been included. Section 519 of the Regulation follows Section 11 of the Act of 1864. It was repealed in the Whipping Act and introduced in the Criminal Procedure Code. It may therefore be said to follow Section 393 of the Criminal Procedure Code.

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There is however a difference between the two in that persons sentenced to more than five years are exempted in the British Indian Code. The Regulation exempts convicts sentenced to more than seven years' imprisonment.

iv. In the case of juvenile offenders, the number of stripes is limited to 15 by the amendment of Section 392 of the Criminal Procedure Code.

v. The power to award whipping is vested in First Class Magistrates, and Second Class Magistrates who were specially empowered in this behalf were divested of this power by the amendment of Section 32 of the Criminal Procedure Code. Our Criminal Procedure Code empowers all Second Class Magistrates to award whipping.

The net result of the amendments of Act IV of 1909 is, in the words of Sir Harvey Adamson,—

(1) that whipping is confined to First Class Magistrates;

(2) that, in respect of adults, whipping is retained as a sole punishment for ordinary thefts and kindred offences of an active and daring character; and

(3) as a sole or combined punishment for a very limited number of offences of a brutal and sordid nature; while

(4) in respect of juveniles, it is retained in a less severe form.

I think the provisions of Act IV of 1909 may be substituted for Sections 515 to 518. Section 519 may be amended by reducing the number 7 to 5 in line 3.

12. Clauses 12 to 15 call for no remarks as they are necessitated by the amendments to the Penal Code.

13. I have given notice of a motion to amend Section 236A of the Criminal Procedure Code. Chapter 21 A of the Criminal Procedure Code deals with summary trials. Since the passing of the Criminal Procedure Code, the Hackney Carriage Regulation has been passed, and it is thought that offences under that Regulation also should be tried summarily. It may be some time before the Criminal Procedure Code is completely revised, and it is thought inexpedient to delay the amendment till then.

With these words, I beg to move that the principle of the Bill be affirmed."

Seconded by Mr. Vieyra.

Mr. Velu Pillai:—

"Sir,

The affirmation of the principle of this Bill presents a good deal of difficulty; for there are various matters put together in this amendment. There are several matters on which there may be an honest difference of opinion. But there is one topic which in my view requires a careful examination, and that is the provision regarding the new offence of criminal conspiracy. The definition of the offence is one of those instances in which language is unable to express the true significance of ideas. To those who are not specially trained in law, the ramifications of this definition are not at all clear. I speak on this aspect of the matter because I anticipate an answer that may be given by the Mover when I oppose the motion. He would say that the Bill has now been before the public for some months and that no representations have been made by the people against its adoption. This is mostly due to ignorance and partly to the feeling of safety and security that has been encouraged by the paternal Government of His Highness the Maha Raja under the guidance of the Paramount Power. If the difficulties are placed before them with adequate explanations and amplifications, I am sure that the entire population of the State will unite in opposing the measure.

Let us consider why the change is sought to be made. I am unable to follow the argument of the Mover to make out a case of expediency or necessity. I quite see that offences become more dangerous to public welfare when the culprit is strengthened by the counsels and encouragement of his friends who indulge in their dangerous pranks behind the curtain. This has been clearly seen by the framers of the Indian law and has borne fruit in the law of abetment laid down in Section 107 of the Indian Penal Code corresponding to Section 97 of our Penal Code, Regulation I of 1074. To such of my friends as are not lawyers, I might say that abetment consists in (1) instigating any person to do a thing, (2) intentionally aiding him therein, or (3) by uniting with one or more persons in any conspiracy for the doing of that thing. It is only with the last kind of abetment that we are now concerned. If the object of the law be the prevention of offences and the punishment of offenders, the above provision is sufficient; for, according to the existing law taken with Section 10 of the Indian Evidence Act, the accessories whether those in direct

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participation or intermediaries are within its purview. Except with reference to offences against the State which ought to stand on a different footing from that of other offences, it is the overt act or the illegal omission alone that is indictable; for it is a well established principle of Criminal Law that intention *Per Se* is not punishable. A conspiracy is but an exchange of intention if no offence takes place as a consequence. It is not even an act of preparation. But the amendment proposed has the declared object of making agreements to commit offences or to do an illegal act or to do a legal thing by illegal means liable to punishment. The offence becomes complete as soon as a common intention is expressed and an agreement entered into. To take an example, suppose a person by leave and license uses a road over which another has an absolute right. The owner revokes the leave and puts up an obstruction, say, a wall. The former licensee agrees with his son to pull down the wall by force. The man devotes mature thought to the subject and comes to the conclusion that the wall should not be pulled down. The son acquiesces in the proposal and the plan is given up at once. But according to the new law, the father and the son will be punished, although they have not done anything at all to the prejudice of the neighbour. When a matter like this is being discussed, it is a cold consolation to be told that the existing law is faulty and that it should be put into line with the Criminal Law of England or that of British India. The learned Mover had no other reasons than those mentioned above to justify the amendment. I concede that modifications of law are sometimes necessary. It may have been necessary in British India in 1913. But even on that question there is a great difference of opinion. I accept the dictum that the laws of a country have sometimes to be modified to suit the existing conditions. That is the spirit in which this Council passed the Nair Regulation, the Christian Succession Regulation, and is now considering the Chitties Bill and the Municipal Bill. But what is the object of making conspiracy an offence? I shall be obliged if the gentleman in charge of the Bill will explain how the absence of the provision has tended towards any failure of justice. Is there any single instance of a real offender having escaped conviction on account of that defect? Have the subordinate Courts had to acquit the offenders because they could not be brought within any of the provisions of the existing Regulation? Has the High Court made any recommendation to insert a new Section? I would even ask whether the Police Commissioner has made any proposals, and if he has done so, whether such a position can be maintained by a reference to actual cases? I am afraid that no satisfactory answer can be given to these questions. To say that there is a gap in the Criminal Law and that that gap should be filled up so as to bring it into conformity with the laws of England or of British India is nothing more than a sacrifice of discretion to the force of a theory. I need hardly say that such a view should not influence the action of a legislative body like this. The laws of England are the product of historic conditions in that country. They are administered under the safeguards and conditions which do not exist in Travancore. The rules of evidence and procedure are different from those obtaining here. Trial by jury which is one of the grandest products of English History and the greatest blessing of the English Judicial system is still out of the range of practical politics in this country. Let us take the case of British India. Let us see what necessitated the law in British India. I have carefully read the history of the Criminal Law Amendment Bill of 1913 before the Imperial Legislative Council. The learned Mover ought to have read the whole of the literature on the subject. I find from the report of the discussion that the real object was to strike at those dangerous conspiracies which were discovered in a few disturbed districts in the Indian Empire. Although the law was framed in a comprehensive manner, it was the safety of the State and not the fancied safety of the individuals that was before the minds of the Members of that august body. The Honourable Sir Gangadhar Chitnavis who supported the principle of the Bill said:— "In the exceptional state of things caused by the recrudescence of anarchy and other political crimes, the Government might be excused-mark the word-for seeking wider legal powers of control and punishment.". Let me quote the Mover of the Bill himself. This is what Sir Reginald Craddock said on that occasion in reply to the Honourable Members who opposed the Bill:—"Because our predecessors have not filled up this gap, are we to hesitate and wait a year when we are convinced that it ought to be filled up at once? It is not merely because of the dastardly outrage of the 23rd December that the Government have put forward this Bill. It is because the continued existence of the spirit of which that outrage was the outward manifestation, is the surest indication to us that the matter is one that will not brook any delay. The spirit which plotted the many crimes committed in Bengal during the period of unrest, the spirit which planned the murder of Mr. Jackson at Nasick, of Mr. Ash in Tinnevelley, the spirit which inspired the murder of so many faithful servants of Government and of those men who through fear or penitence gave information to the State, that spirit is still alive in the land." Sir, no one who has the interest of his country and the welfare of society at heart will desire

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to perpetuate these conditions if they exist. It is never too early to end them and if there is in any part of Travancore the remotest approach to such a state of affairs, we have unanimously to pass the new law of criminal conspiracy and stamp out the spirit with all the executive vigilance. I think that political offences are unknown in Travancore. In former days our countrymen were loyal by instinct and tradition, and if today Travancore claims to be the best educated part of the Imperial Empire, the people have also learned to realise that their best interests require a strong and efficient Government in this country maintaining its unimpaired connection with the British Government. There is no State anywhere in India whose people are more peace-loving and law-abiding than the people of Travancore; and it is therefore all the more unnecessary that new statutory offences should be created to meet the requirement of a legislative hobby. If change is necessary for its own sake, and if the views I have explained do not meet the approval of Government, and if at the same time the tradition of this Council composed as it is of an official majority which is pledged to vote *enbloc* with the mover of an official Bill is to be adhered to, let me make one further suggestion. Let the new law of criminal conspiracy apply only to the more serious offences, such as those cognisable offences which are triable exclusively by a Court of Session. It will be hardly wise to make the new provision applicable to offences like simple assault, defamation and trespass which are of a quasi civil nature and which do not affect the State to as large an extent as the graver offences. The multiplication of offences always means an increase in litigation. Prosecution will increase in geometrical progression when the *corpus delicte* can be easily established. In murder and dacoity and in all offences affecting the human body or any property, material and tangible results will accompany their commission. But an agreement to commit an offence is very often an airy nothing, and makes no permanent impressions. The result is that charges vague as wind will have a luxuriant growth on this litigious soil. A busy trade in frivolous and exaggerated prosecutions will follow, the records of Police Stations and Courts of Justice will be disfigured by accounts of unsuccessful prosecutions; and informers and subordinate officers will profit by such undesirable abundance. The friction between caste and caste which unfortunately is the out-come of a few sectarian organisations might accelerate the evil; and it requires no small strength of mind for an officer to disbelieve information of vague crimes given by interested subordinates.

There is only one more aspect of the question on which I wish to say a few words. Travancore is a small State divided into five Districts, and in each one of them there is a District Magistrate responsible for its peace and security. He is assisted by a full complement of Police officers as well. Compare with this the large territorial jurisdiction of Magistrates and Police officers in British India. There are Districts larger and more populous than our whole State and the District Officer finds it difficult, almost impossible, to keep himself in touch with all that occurs within the wide limits of his jurisdiction. Our District Officer picks up knowledge of local conditions, of men and measures within 3 or 4 months of his appointment if he is not already familiar with them. The names of places, even the nooks and corners, the conditions of particular localities, and the propensities of individuals are matters of clear personal knowledge which he can readily act upon with advantage. Compared with this, the work of the District Officer in British India presents overwhelming difficulties. If our District Magistrates will only take as much interest in Police matters as in matters of Revenue, and if they are able to enlist the active and honest support of the Police, the existing law will be quite sufficient for the extermination of crime. If the lower subordinates will do their duty with earnestness and devotion, no additional laws will be found necessary. I would therefore emphasise this opinion once more and appeal to the President and Members of this Council to omit the Section from the new Bill."

Mr. Parameswaran Pillai:—

" Sir.

This Bill consists of 14 Clauses and it proposes to amend some of the provisions of the Penal Code. I think we have to affirm or disaffirm the principle of each of the amendments now proposed. In regard to Clauses 4, 5 and 10, I have a few words to say. In regardto the other amendments, I have great pleasure in supporting the Mover and in affirming their principle. In fact, in regard to one of them, *viz*, that which relates to the raising of the age of consent, I wholeheartedly support the principle, and I have great pleasure in congratulating the Government upon introducing it at least now. I am only sorry that Government could not see their way to go a little further. The Clauses the principle of which I regret very much I have to oppose are those which relate to (1) conspiracy (Clause 4), (2) promoting enmity between class and class (Clause 5), and (3) creating disaffection (Clause 10).

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In regard to conspiracy, on reading the published Objects and Reasons for the introduction of the Bill, I find that the only reason given by the Mover is that, as the provisions of our Penal Code follow those of the British Indian Penal Code, the Bill is merely intended to bring our Code into conformity with the Penal Code existing in British India. I submit that before a provision, and particularly one so vaguely and therefore all the more dangerously worded, is introduced into the Statute Book, not only some necessity but, I submit, absolute necessity for its introduction should be made out. From the learned Mover's speech, it appears that the only reasons suggested for introducing these provisions into our Code are, so far as I am able to follow, firstly, that such a provision exists in the penal law of England and that it also exists in the penal law of British India. With regard to the first, I submit that it is evident from the Mover's speech that it was centuries before, *i. e.*, as he himself admitted, it was in the 14th century that this law was introduced in England, and therefore the learned framers of the British Indian Penal Code could not have been unaware of it. But the conditions did not necessitate the introduction of such a provision into the Indian Code. If we study the published history of England at that date in which this law was introduced, we shall be able to make out very satisfactorily that the politically unsettled condition of England at that time necessitated the introduction of such a provision into the penal law. The framers of the Penal Code in British India did not find the necessity for introducing that law into the penal law of India which was introduced long after the English law had been passed. Later on, as was pointed out and as the discussion of the Bill in the Legislative Council would show, exceptional circumstances came into existence in certain parts of India, which excused that not justifiable introduction of this provision into the Indian Penal Code. But I humbly submit that, happily, no such circumstances have come into existence in Travancore. I am sure that so far as conditions now exist here there is absolutely no need for the Travancore Government to provide against such a contingency, and therefore the introduction of such a measure will not only not be justifiable but I submit that, in the absence of exceptional conditions which existed in British India, it would be absolutely inexcusable. We are assured by the Mover that this is not intended to be put into force in regard to offences between parties and parties but that it is only when a public danger is apprehended that it is intended to be put into force. I cannot see what guarantee our learned friend can give for such a statement. So far as the amendment now proposed goes, it is quite clear to me that the assurance given by my friend is not sufficient safeguard against the abuse of this provision. I submit therefore that absolutely no necessity has been shown for this amendment. The existence of such a provision in the British Indian Code does not justify its introduction into our Code. We are not here merely for the purpose of enacting all the laws that exist in British India. If we exist for that, our existence would be unjustifiable. I therefore strongly object to the introduction of this Clause into the Penal Code of Travancore.

Then with regard to Clause 5 (Section 145 A), namely, promoting enmity between class and class:—In regard to this also, I humbly submit that this country is inhabited by a larger number of classes than perhaps British India. Owing to the enlightened education and the policy of Travancore Government, each community and each class is now becoming awakened to its own rights, duties and privileges and therefore each is in its own way working for the amelioration of its conditions. Consequently, although they might be called sectional institutions, organisations and meetings for the well-being both social and material of different classes and communities in Travancore are coming into existence, and although we can give a dog a bad name and hang it, it appears to me that all these institutions exist not only for the uplifting of the several communities but also for the common good. It should not be the object of the Government to discourage such institutions. Taking it for granted that such institutions exist in the attainment of one class, to ameliorate one class, it may sometimes incite against the manners of other communities, and speeches and statements may sometimes be unknowingly made and these may be construed by unsympathetic listeners to create an enmity between class and class and much harm will ensue on that account. It is therefore a very dangerous provision to be incorporated into the Travancore Penal Code. I therefore very much regret that I have to be equally strong in opposing this amendment.

As regards Clause 10 in the Bill, certain alteration is sought to be made in Section 508. By this alteration, the responsibility of the man who makes the statement, or publishes or circulates a rumour does not cease with the fact that he did not know that to be false but that he should have reasonable cause for believing it to be true. As the law now stands, unless you give your rumour knowing it to be false, it is not an offence. But this is sought to be altered and it is sought to be made into this:—If the statement is published or circulated without reasonable cause for believing that it is true it will be an offence. I

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submit that that is the greatest alteration in principle, for which also no reason or object has been stated in the published Objects and Reasons except that it is also intended to bring the law of Travancore into conformity with the law in British India. I humbly submit that for these reasons, I strongly oppose the principle of this Bill in so far as these provisions are concerned."

Mr. Govinda Menon:—

"I support Messrs. K. Parameswaran Pillai and T. K. Velu Pillai in their opposition to the provisions mentioned in Clauses 4, 5 and 10."

Mr. Subrahmanya Pillai:—

"Messrs. K. Parameswaran Pillai and T. K. Velu Pillai have dwelt at length on the defects as well as the good points in the Bill. So, I do not wish to waste the time of the Council on these points. I wish to say a few words on Clause 10 of the Bill to the introduction of which I take a very strong objection. Clause 10 of the Bill is to be a substitute for Section 508 of the Travancore Penal Code. Section 508 affects only persons who publish or circulate any statement or rumour which they know to be false, and that with criminal intention. That is nothing but fair. But the present change brings under the clutches of law even a person who without criminal intention makes a statement even in ordinary gossip. As far as possible, intention must be the only criterion for criminal action. To assert the truth of a statement or rumour and then discuss it is not generally practised by ordinary people. When one does it with intention to incite, then he must certainly be punished. The words "which is likely to cause" in Clauses (*a*) and (*b*) and "which is likely to incite" in (*c*) are quite misleading. The Clause as at present worded is capable of being made applicable even to an innocent person by an irresponsible officer if he chooses. One of the arguments for the introduction of Clause 10, viz., that it is intended to bring the penal law of Travancore into conformity with the law in British India, does not commend itself to me. I would suggest the complete dropping of Clause 10 from the Bill. I hope that this part of the Bill will receive careful examination on the part of the Select Committee that may be appointed for the consideration of the Bill. The other Clauses in the Bill bring in quite necessary changes. Hence I have much pleasure in supporting the principle regarding them."

Mr. Subba Aiyar, in reply, spoke as follows:—

"I beg to say a few words in reply to the remarks of my friends on the other side I am glad that Mr. T. K. Velu Pillai has supported the principle of the Bill except in regard to Clause 4 and that all the Members have accepted the principle of the Bill except Clauses 4, 5 and 10. With reference to Clause 10, I may say at the outset that the modification has become necessary in view of the modification proposed to Clause 5 regarding incitement or causing hatred between the different classes of His Highness' subjects. If Clause 5 were adopted, we cannot but modify Section 508. The criminal intent necessary to constitute the offence under the existing Section is also found in Clause 10. The only modification that has been made in the existing wording is that, instead of the words "which he knows to be false", an exception has been substituted. With regard to the observation of my friend Mr. Parameswaran Pillai about Clause 5 regarding the new Section 145A, I may observe that if any particular community works in such a way as to bring about the amelioration of its own condition, there will be absolutely no objection whatever. But, if in so doing, it will incite or bring about hatred between any two sections of His Highness' subjects, I beg to state that it is absolutely essential that in the interests of the public peace and in the interests of the State that the Government should have power to prosecute such persons before a Criminal Court. I may also say that such prosecutions will have to be started only with the sanction of Government. Then with regard to the observations of Messrs. T. K. Velu Pillai and Parameswaran Pillai about Clause 4, I beg to state that it is not because that it has been the law in England that it is sought to be introduced here, or was introduced in British India. We know as a matter of fact that the system of law in England is a very enlightened and humane one, and England is reputed for its vindication of public rights. This is a law which has stood the test of many centuries and is considered to be very reasonable, and, as observed by very eminent Judges, to be very necessary also. It is that law that was adopted in British India. There is absolutely no reason why the English system of law as to conspiracy regarding the attainment of legal objects by illegal means should not be introduced, and, as I have already said, this Section will be particularly applied only to those major offences to which I am glad to observe that Mr. Velu Pillai conceded that it should be applicable. With regard to others, viz., conspiracy for the securing of legal objects by illegal means, some overt act is necessary. Sufficient safeguard requiring the sanction of Government as a pre-requisite for

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prosecution will be made by the amendment of the Criminal Procedure Code. If necessary, the amendment may be made in the present Bill itself. This is however a matter which may be left to the Select Committee. For these reasons, I submit that the grounds stated by the Non-official Members are not tenable, and that the principle of the Bill may be affirmed."

Mr. Parameswaran Pillai :—

"As I said before, the principle of each of the provisions in the Bill will have to be taken up separately. The Bill contains amendments to several provisions of the Code as well as new provisions. Our objection relates to some of these provisions. With regard to the rest, we affirm the principle, and so, in regard to those provisions the principle of which we oppose, we may be permitted to vote separately."

President:—"With reference to this, what I have to say is this. Of course, in the Bill, there are some Sections to which no objection has been taken, and there may be one or two provisions to which you raise an objection. But the procedure in the Council is to affirm the principle of a Bill as a whole or not. The objections you have raised in regard to some of the provisions in the Bill may be considered by the Select Committee. I am sure that the Select Committee will go into that question. Now it is only the principle of the Bill as a whole and not with reference to each Section that could be put to vote, so that I shall put the principle of the Bill as a whole to the vote".

Mr. Velu Pillai :—"In that case, we shall have to oppose the whole Bill".

Mr. Subba Aiyar's motion was put to the vote and carried by a majority.

Mr. Subba Aiyar then moved that the Bill be referred to a Select Committee consisting of Messrs. Vieyra, Subrahmanya Aiyar, Parameswaran Pillai, Subrahmanya Pillai and the Mover to report within three months.

Seconded by Mr. Mahadeva Aiyar.

Carried.

THE CATTLE TRESPASS REGULATION AMENDMENT BILL.

Mr. Subba Aiyar, in introducing the Cattle Trespass Regulation Amendment Bill, spoke as follows :—

"Sir,

I beg to introduce a Bill to amend the Cattle Trespass Regulation. The object of the Bill is very clearly explained in the Statement of Objects and Reasons. The Members of the Council are well aware that, in pursuance of the Notification of Government, No. J. 2573, dated the 23rd March 1913, all the various Town Improvement Committees have been empowered to exercise control over the cattle pounds within their jurisdiction and that the receipts are credited to them. It is doubted whether the Notification is in strict conformity with the Regulation itself. It is to give legal validity to the above Notification that the present Bill is proposed. Some difficulty has been experienced by the designation of the fund as 'Cattle Pound Fund of the District'. Under the Regulation, the surplus fund is at the absolute disposal of Government. How the fund should be credited and how that fund should be spent will be dealt with by the Government and the Account Department. Lastly, there are other officers than the District Magistrates who exercise some control over cattle pounds, for instance, the Forest officers, Excise and the P. W. D. officers. It is thought desirable to invest the officers of these Departments with the powers of a District Magistrate. For these reasons, I beg to move that the principle of the Bill be affirmed."

Seconded by Mr. Raman Pillai.

Carried.

The Principle of the Bill having been affirmed, Mr. Subba Aiyar moved that the Bill be referred to a Select Committee consisting of Messrs. Kuriyan, Govinda Menon and the Mover, to report within one month.

Seconded by Mr. Raman Pillai.

Carried.

THE POLICE REGULATION AMENDMENT BILL.

Mr. Subba Aiyar, in introducing the Police Regulation Amendment Bill, spoke as follows:—

"Sir,

I beg to introduce a Bill to amend the Police Regulation. The Bill with its translation was published in the Gazette dated the 5th June 1917. Regulation IV of 1056 follows:

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